

SECOND REGULAR SESSION

HOUSE BILL NO. 1296

96TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES DAVIS (Sponsor), DAY, WHITE, BROWN (116), FISHER, LANT, McCAHERTY, ROWLAND, REIBOLDT, RICHARDSON, ATKINS, BRATTIN, WRIGHT, WELLS, ELMER AND BROWN (85) (Co-sponsors).

5072L.01I

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 452, RSMo, by adding thereto one new section relating to child custody and visitation for military personnel.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 452, RSMo, is amended by adding thereto one new section, to be known as section 452.413, to read as follows:

452.413. 1. As used in this section, the following terms shall mean:

- (1) "Deploying parent", a parent of a child less than eighteen years of age whose parental rights have not been terminated by a court of competent jurisdiction or a guardian of a child less than eighteen years of age who is deployed or who has received written orders to deploy with the United States Army, Navy, Air Force, Marine Corps, Coast Guard, National Guard, or any other reserve component thereof;
- (2) "Deployment", military service in compliance with military orders received by a member of the United States Army, Navy, Air Force, Marine Corps, Coast Guard, National Guard, or any other reserve component thereof to report for combat operations, contingency operations, peacekeeping operations, temporary duty (TDY), a remote tour of duty, or other service for which the deploying parent is required to report unaccompanied by any family member. Military service includes a period during which a military parent remains subject to deployment orders and remains deployed on account of sickness, wounds, leave, or other lawful cause;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

15 (3) "Military parent", the legal parent of a child less than eighteen years of age
16 whose parental rights have not been terminated by a court of competent jurisdiction, and
17 who is a service member of the United States Army, Navy, Air Force, Marine Corps, Coast
18 Guard, National Guard, or any other reserve component thereof;

19 (4) "Nondeploying parent", a parent or guardian not subject to military
20 deployment.

21 2. If a military parent is required to be separated from a child due to deployment,
22 a court shall not enter a final order modifying the terms establishing custody or visitation
23 contained in an existing order until ninety days after the deployment ends.

24 3. In accordance with section 452.412, deployment or the potential for future
25 deployment shall not be the sole factor supporting a change in circumstances or grounds
26 sufficient to support a permanent modification of the custody or visitation terms
27 established in an existing order.

28 4. (1) An existing order establishing the terms of custody or visitation in place at
29 the time a military parent is deployed may be temporarily modified to make reasonable
30 accommodation for the parties due to the deployment.

31 (2) A temporary modification order issued under this section shall provide that the
32 deploying parent shall have custody of the child or reasonable visitation, whichever is
33 applicable under the original order, during a period of leave granted to the deploying
34 parent.

35 (3) Any court order modifying a previously ordered custody or visitation due to
36 deployment shall specify that the deployment is the basis for the order and shall be entered
37 by the court as a temporary order.

38 (4) Any such custody or visitation order shall further require the nondeploying
39 parent to provide the court and the deploying parent with a thirty day advance written
40 notice of any change of address and any change of telephone number. However, if a valid
41 domestic violence court order from this or another jurisdiction is in effect that requires
42 that the address or contact information of the parent who is not deployed be kept
43 confidential, the notification shall be made to the court only, and a copy of the order shall
44 be included in the notification.

45 (5) Upon motion of a deploying parent, upon reasonable advance notice and for
46 good cause shown, the court shall hold an expedited hearing in any custody or visitation
47 matters instituted under this section when the military duties of the deploying parent have
48 a material effect on his or her ability or anticipated ability to appear in person at a
49 regularly scheduled hearing.

50 **5. (1) A temporary modification of such an order automatically ends no later than**
51 **thirty days after the return of the deploying parent and the original terms of the custody**
52 **or visitation order in place at the time of deployment are automatically reinstated.**

53 **(2) Nothing in this section shall limit the power of the court to conduct an expedited**
54 **or emergency hearing regarding custody or visitation upon return of the deploying parent,**
55 **and the court shall do so within ten days of the filing of a motion alleging an immediate**
56 **danger or irreparable harm to the child.**

57 **(3) The nondeploying parent shall bear the burden of showing that reentry of the**
58 **custody or visitation order in effect before the deployment is no longer in the child's best**
59 **interests. The court shall set any nonemergency motion by the nondeploying parent for**
60 **hearing within thirty days of the filing of the motion and this shall take precedence on the**
61 **court's docket.**

62 **6. (1) Upon motion of the deploying parent or upon motion of a family member of**
63 **the deploying parent with his or her consent, the court may delegate his or her visitation**
64 **rights, or a portion of such rights, to a family member with a close and substantial**
65 **relationship to the minor child or children for the duration of the deployment if it is in the**
66 **best interest of the child.**

67 **(2) Such delegated visitation time or access does not create an entitlement or**
68 **standing to assert separate rights to parent time or access for any person other than a**
69 **parent, and shall terminate by operation of law upon the end of the deployment, as set**
70 **forth in this section.**

71 **(3) Such delegated visitation time shall not exceed the visitation time granted to the**
72 **deploying parent under the existing order; except that, the court may take into**
73 **consideration the travel time necessary to transport the child for such delegated visitation**
74 **time.**

75 **(4) In addition, there is a rebuttable presumption that a deployed parent's visitation**
76 **rights shall not be delegated to a family member who has a history of perpetrating**
77 **domestic violence against a spouse, child, or a domestic living partner, or to a family**
78 **member with an individual in the family member's household who has a history of**
79 **perpetrating domestic violence against a spouse, child, or a domestic living partner.**

80 **(5) The person or persons to whom delegated visitation time has been granted shall**
81 **have full legal standing to enforce such rights.**

82 **7. Upon motion of a deploying parent and upon reasonable advance notice and for**
83 **good cause shown, the court shall permit such parent to present testimony and evidence**
84 **by affidavit or electronic means in support, custody, and visitation matters instituted under**
85 **this section when the military duties of such parent have a material effect on his or her**

86 ability to appear in person at a regularly scheduled hearing. Electronic means includes
87 communication by telephone, video conference, or the internet.

88 8. Any order entered under this section shall require that the nondeploying parent
89 shall:

90 (1) Make the child or children reasonably available to the deploying parent when
91 the deploying parent has leave;

92 (2) Facilitate opportunities for telephonic and electronic mail contact between the
93 deploying parent and the child or children during deployment; and

94 (3) Provide timely information regarding the deploying parent's leave schedule to
95 the nondeploying parent.

96 9. (1) If there is no existing order establishing the terms of custody and visitation
97 and it appears that deployment is imminent, upon the filing of initial pleadings and motion
98 by either parent, the court shall expedite a temporary hearing to establish temporary
99 custody or visitation to ensure the deploying parent has access to the child, to ensure
100 disclosure of information, to grant other rights and duties set forth in this section, and to
101 provide other appropriate relief.

102 (2) Any initial pleading filed to establish custody or visitation for a child of a
103 deploying parent shall be so identified at the time of filing by stating in the text of the
104 pleading the specific facts related to deployment.

105 10. (1) Since military necessity may preclude court adjudication before
106 deployment, the parties shall cooperate with each other in an effort to reach a mutually
107 agreeable resolution of custody, visitation, and child support. Each party shall provide
108 information to each other in an effort to facilitate agreement on custody and visitation.

109 (2) A deploying parent shall provide a copy of his or her orders to the nondeploying
110 parent promptly and without delay prior to deployment. Notification shall be made within
111 ten days' of receipt of deployment orders. If less than ten days notice is received by the
112 deploying parent, notice shall be given immediately upon receipt of military orders. If all
113 or part of the orders are classified or restricted as to release, the deploying parent shall
114 provide, under the terms of this subdivision, all such nonclassified or nonrestricted
115 information to the nondeploying parent.

116 11. In an action brought under this chapter, whenever the court declines to grant
117 or extend a stay of proceedings under the Servicemembers Civil Relief Act, 50 U.S.C.
118 Appendix Sections 521-522, and decides to proceed in the absence of the deployed parent,
119 the court shall appoint at the request of the deployed parent or on its own motion a
120 guardian ad litem to represent the minor child's interests.

121 **12. Service of process on a nondeploying parent whose whereabouts are unknown**
122 **may be accomplished by certified mail, return receipt requested, to the nondeploying**
123 **parent's last known address based on an affidavit of the deploying parent.**

124 **13. In determining whether a parent has failed to exercise visitation rights, the**
125 **court shall not count any time periods during which the parent did not exercise visitation**
126 **due to the material effect of such parent's military duties on visitation time.**

127 **14. Once an order for custody has been entered in Missouri, any absence of a child**
128 **from this state during deployment shall be denominated a temporary absence for the**
129 **purposes of application of the Uniform Child Custody Jurisdiction and Enforcement Act**
130 **(UCCJEA). For the duration of the deployment, Missouri shall retain exclusive**
131 **jurisdiction under the UCCJEA and deployment shall not be used as a basis to assert**
132 **inconvenience of the forum under the UCCJEA.**

133 **15. In making determinations under this section, the court may award attorney's**
134 **fees and costs based on the court's consideration of:**

135 **(1) The failure of either party to reasonably accommodate the other party in**
136 **custody or visitation matters related to a military parent's service;**

137 **(2) Unreasonable delay caused by either party in resolving custody or visitation**
138 **related to a military parent's service;**

139 **(3) Failure of either party to timely provide military orders, income, earnings, or**
140 **payment information, housing or education information, or physical location of the child**
141 **to the other party; and**

142 **(4) Other factors as the court may consider appropriate and as may be required by**
143 **law.**

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